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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0727; FRL-FRL-9900-24-Region 8]

Promulgation of State Implementation Plan Revisions; Revision to Prevention of Significant Deterioration Program; Infrastructure Requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Utah

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule

SUMMARY: EPA is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submissions from the State of Utah to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for particulate matter less than or equal to 2.5 micrometers (μm) in diameter (PM_{2.5}) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that it meets the requirements of the “infrastructure elements” necessary to implement the new or revised NAAQS. The State of Utah provided infrastructure submissions for the 1997 and 2006 PM_{2.5} NAAQS, dated April 17, 2008 and September 21, 2010, respectively. We propose to disapprove the submissions with respect to the requirements for state boards and to approve the remaining submissions that we have not already acted on. We also propose to approve portions of a submission from the State which was received by EPA on March 19, 2012. This submission revises Utah’s Prevention of Significant Deterioration (PSD) program to meet Federal

requirements as they existed on July 1, 2011, including required elements of EPA's 2008 PM_{2.5} New Source Review (NSR) Implementation Rule and 2010 PM_{2.5} Increment Rule. EPA acted separately on the State's submissions to meet certain interstate transport requirements of the CAA for the 2006 PM_{2.5} NAAQS.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0727, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: ayala.kathy@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0727.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information

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Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program,

Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, ayala.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The initials DEQ mean or refer to Department of Environmental Quality.
- (iv) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (v) The initials FIP mean or refer to a Federal Implementation Plan.
- (vi) The initials GHG mean or refer to greenhouse gases.
- (vii) The initials NAAQS mean or refer to national ambient air quality standards.
- (viii) The initials NO_x mean or refer to nitrogen oxides.
- (ix) The initials NSR mean or refer to new source review.

- (x) The initials OAQPS mean or refer to the Office of Air Quality Planning and Standards.
- (xi) The initials PM mean or refer to particulate matter.
- (xii) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (xiii) The initials ppm mean or refer to parts per million.
- (xiv) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xv) The initials SIP mean or refer to State Implementation Plan.
- (xvi) The initials SSM mean or refer to start-up, shutdown, or malfunction.
- (xvii) The initials UAC mean or refer to Utah Administrative Code.
- (xviii) The initials UCA mean or refer to Utah Code Annotated.
- (xix) The initials UDAQ mean or refer to the Utah Department of Air Quality.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:
- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
 - Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and/or data that you used;
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
 - Provide specific examples to illustrate your concerns, and suggest alternatives;
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
 - Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for particulate matter less than or equal to 2.5 micrometers (μm) in diameter ($\text{PM}_{2.5}$). Two new $\text{PM}_{2.5}$ standards were added, set at $15\ \mu\text{g}/\text{m}^3$, based on the 3-year average of annual arithmetic mean $\text{PM}_{2.5}$ concentration from single or multiple community-oriented monitors, and $65\ \mu\text{g}/\text{m}^3$, based on the 3-year average of the 98th percentile of 24-hour $\text{PM}_{2.5}$ concentrations at each population-oriented monitor within an area. In addition, the 24-hour PM_{10} standard was revised to be based on the 99th percentile of 24-hour PM_{10} concentration at each monitor within an area (62 FR 38652).

On October 17, 2006 EPA promulgated a revised NAAQS for $\text{PM}_{2.5}$, tightening the level of the 24-hour $\text{PM}_{2.5}$ standard to $35\ \mu\text{g}/\text{m}^3$ and retaining the level of the annual $\text{PM}_{2.5}$ standard at $15\ \mu\text{g}/\text{m}^3$. EPA also retained the 24-hour PM_{10} standard and revoked the annual PM_{10} standard (71 FR 61144). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 and 2006 $\text{PM}_{2.5}$ NAAQS, states typically

have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

III. What is the Scope of this Rulemaking?

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, "Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" in the section entitled, "What Is The Scope Of This Final Rulemaking?" (see 76 FR 41075 at 41076 – 41079).

IV. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

EPA is acting separately on Utah's submission to meet the requirements of element 110(a)(2)(D)(i)(I), interstate transport of pollutants which contribute significantly to

nonattainment in, or interfere with maintenance by, any other state. EPA is also acting separately on the visibility portion of element 110(a)(2)(D)(i)(II).

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

V. How Did Utah Address the Infrastructure Elements Of Sections 110(a)(1) and (2)?

1. **Emission limits and other control measures:** Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. **Utah’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite the Utah Code Annotated (UAC) SIP Section I (Legal Authority).A.1.a., codified at R307-110-2 which allows adoption of standards and limits for attainment and maintenance of national standards (19-2-104 and 109, UCA) and was approved

by EPA in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. **EPA analysis:** Utah's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 and 2006 PM NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 and 2006 PM_{2.5} NAAQS. Aside from this, the Utah SIP currently contains provisions for control of particulate matter, such as open burning provisions in R307-202, and for control of precursors, such as fuel sulfur content provisions in R307-203. Utah also regulates sources of PM_{2.5} through its PSD and minor NSR programs. This suffices, in the case of Utah, to meet the requirements of section 110(a)(2)(A) for the 1997 and 2006 PM_{2.5} NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the

CAA and existing EPA guidance.¹ In the specific case of SSM provisions in the Utah SIP, EPA has issued a finding of substantial inadequacy and call for a SIP revision for Utah's "unavoidable breakdown" rule (76 FR 21639, Apr. 18, 2011). On May 9, 2013 (78 FR 27165), EPA proposed to approve revisions submitted by Utah to correct the deficiencies identified in EPA's April 18, 2011 SIP call. As stated above, though, EPA is not proposing to address SSM provisions in the context of this action and therefore proposes to approve the Utah certification for infrastructure element 110(a)(2)(A) for the 1997 and 2006 PM_{2.5} NAAQS.

2. **Ambient air quality monitoring/data system:** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to "(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite UAC rule R307-110-5 SIP Section IV (Ambient Air Monitoring Program) which provides a brief description of the purposes of the air monitoring program approved by EPA in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. **EPA analysis:** Utah's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 and 2006 PM_{2.5} NAAQS. The State of Utah submitted a 2012 Air Monitoring Network Plan on June 5, 2013 which EPA approved for PM_{2.5} on July 24, 2013.

¹ Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown." (Sept. 20, 1999)

3. **Program for enforcement of control measures:** Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite UAC rule R307-110-2, SIP Section I (Legal Authority), A.1.b., which allows for enforcement of applicable laws, regulations, and standards and to seek injunctive relief (Sections 19-2-104 and 19-2-115, UCA), and SIP Section I (Legal Authority), A.1.d., which provides authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements (Authority Utah Code Section 19-2-108). EPA approved this SIP in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

The State also cites UAC rule R307-110-9. SIP Section VIII (PSD), which describes the program to prevent significant deterioration of areas of the state where the air is clean. EPA approved SIP Section VIII, PSD, on July 15, 2011 (76 FR 41712).

b. **EPA analysis:** To generally meet the requirements of CAA section 110(a)(2)(C), the state is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 and 2006 PM_{2.5} NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR

program required by part D of the Act. EPA is evaluating the state's PSD program as required by part C of the Act, and the state's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

Utah has a SIP-approved PSD program that meets the general requirements of part C of the Act (51 FR 31125). To satisfy the particular requirements of section 110(a)(2)(C), states should have a PSD program that applies to all regulated NSR pollutants, including greenhouse gases (GHGs). See 40 CFR 51.166(b)(48) and (b)(49). The PSD program should reflect current requirements for these pollutants. In particular, for three pollutants—ozone, PM_{2.5}, and GHGs—there are additional regulatory requirements (set out in portions of 40 CFR 51.166) that we considered in evaluating Utah's PSD program. In the rulemakings in which EPA revised the requirements in 40 CFR 51.166 for these pollutants, EPA also updated the federal PSD program at 40 CFR 52.21 accordingly.

Utah implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that EPA has promulgated prior to the revised date of incorporation by reference.

In particular, on July 15, 2011 (75 FR 41712), we approved portions of a Utah SIP revision that revised the date of incorporation by reference of the federal PSD program to July 1, 2007. That revision addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved Utah PSD program meets current requirements for ozone.

With regard to GHGs, in the “PSD SIP Narrowing Rule” (75 FR 82536, Dec. 30, 2012), EPA withdrew its previous approval of Utah’s PSD program to the extent that it applied PSD permitting to GHG emissions increases from GHG-emitting sources below thresholds set in EPA’s June 3, 2010 “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (“Tailoring Rule”), 75 FR 31514. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Utah’s PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. On June 22, 2011, EPA received a letter from Utah clarifying that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010 to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA’s basis for the PSD SIP Narrowing Rule and this clarification, the PSD program is adequate with respect to regulation of GHGs,

For PM_{2.5}, EPA has promulgated two relevant rules. The first, promulgated in 2008, addresses (among other things) treatment of PM_{2.5} precursors in PSD programs. The second, promulgated in 2010, establishes (among other things) increments for PM_{2.5}.

On January 4, 2013, the U.S. Court of Appeals, in Natural Resources Defense Council v. EPA, 706 F.3d 428 (D.C. Cir. 2013), issued a judgment that remanded EPA’s 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. The Court ordered EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” Id. at 437. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” (73 FR 28321, May 16, 2008), promulgated New Source Review (NSR) requirements for implementation of PM_{2.5} in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the Court’s opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the Court’s decision. Accordingly, EPA’s approval of Utah’s infrastructure SIP as to elements (C) or (J) with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the Court’s opinion.

The Court’s decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect EPA’s action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as ten years following designations for some elements.

The second PSD requirement for PM_{2.5} is contained in EPA’s October 20, 2010 rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers

(PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). EPA regards adoption of the PM_{2.5} increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

As explained above, the PSD program as currently approved into the SIP incorporates by reference the federal PSD program as it existed on July 1, 2007, prior to EPA’s promulgation of the 2008 PM_{2.5} Implementation Rule and the 2010 PM_{2.5} Increment Rule. On March 14, 2012, the State of Utah submitted revisions to the PSD program that adopt by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2011. As that date is after the effective date of the two rules, the submission incorporates the requirements of them. We propose to approve the necessary portions of the March 14, 2012 submission to reflect the 2008 PM_{2.5} Implementation Rule and the 2010 PM_{2.5} Increment Rule; specifically 40 CFR part 52, section 21, paragraphs (b)(14)(i),(ii),(iii), (b)(15)(i),(ii), (b)(23)(i), (b)(50) and paragraph (c) as they existed on July 1, 2011. We are not proposing to act on any other portions of the March 14, 2012 submittal, including the incorporation by reference of significant impact levels (SILs) and significant monitoring concentrations (SMCs) for PM_{2.5}.

With the partial approval of the March 14, 2012 submittal, the Utah PSD program will meet current requirements for all regulated NSR pollutants. As a result, we also propose to approve the Utah infrastructure SIP for element (C) for the 1997 and 2006 PM_{2.5} NAAQS with respect to PSD requirements.

Finally, EPA proposes to correct, under section 110(k)(6) of the Act, a statement made regarding PSD programs in our July 22, 2011 notice (76 FR 43898) finalizing approval of Utah’s infrastructure SIP for the 1997 ozone NAAQS. In that notice, we responded to a comment

stating that proposed changes to the Utah Administrative Code would, among other things, restrict the availability of judicial review of PSD permits in state courts. In our response, we stated, among other things, “Although EPA is not assessing the availability of state judicial review for PSD permits issued by Utah, as the CAA makes no requirements regarding such availability, EPA also notes that the comment does not explain, for example, why denial of a petition to intervene in a state administrative PSD permit proceeding would not exhaust the petitioner’s administrative remedies and therefore make state judicial review available to the petitioner.” The portion of our response stating that the Act makes no requirements regarding availability of judicial review for PSD permits was in error, (see, e.g., 61 FR 1880, 1882, Jan. 24, 1996; 77 FR 65305, 65306, Oct. 6, 2012), and we propose to correct the error by striking that clause. This correction does not change the basis for our approval of the Utah infrastructure SIP for the 1997 ozone NAAQS, as we rejected the comment on other grounds. This correction also does not reopen our previous action to comment with the exception of our proposed deletion of the incorrect language.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in section II of the Utah SIP, and was originally approved by EPA as section 2 of the SIP (see 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Utah's infrastructure SIP for the 1997 and 2006 PM_{2.5} NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Utah's minor NSR program, as approved into the SIP, covers the construction and modification of stationary sources of "air pollution," a defined term in the Utah SIP that covers a broad range of emissions, including PM_{2.5} and its precursors.² EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. **Interstate Transport:** Section 110(a)(2)(D)(i) is subdivided into four "prongs," two under 110(a)(2)(D)(i)(I) and two under 110(a)(2)(D)(i)(II). The two prongs under 110(a)(2)(D)(i)(I) are (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with

² On June 12, 2013 (78 FR 35181), EPA proposed to partially approve and partially disapprove certain revisions to Utah's minor NSR program. The minor NSR program as amended by those revisions we proposed to approve would, if we complete our proposal, also satisfy the general requirement in 110(a)(2)(C) described above.

maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) are (prong 3) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or (prong 4) to protect visibility. We are not acting on Utah's submissions with respect to the requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) in this proposed rulemaking. We are also not acting on the submissions with respect to the requirements of prong 4 (visibility protection) in this action.

a. **Utah's response to this requirement:** Concerning PSD - EPA believes this requirement is satisfied for PM_{2.5} if a state's SIP includes preconstruction review programs for major sources that satisfy the requirements of both Nonattainment NSR and PSD (40 CFR 51.165(b)(1) and 51.166, respectively). All states are currently required to have some form of preconstruction permitting program for PM_{2.5}, and as per the guidance, it is not necessary to make any rule revisions specifically for the purpose of Section 110 unless the area has outstanding program deficiencies.

Utah is currently operating under the PM₁₀ surrogate policy for the PSD program, as outlined in the 1997 EPA memorandum entitled "Interim Implementation of New Source Review Requirements for PM_{2.5}." Utah intends to incorporate PM_{2.5} into the PSD program by May 2011, as required by the May 16, 2008, PM_{2.5} Implementation Rule for PM_{2.5} NSR. We anticipate that EPA will have established certain requirements, such as PM_{2.5} increments and Significant Impact Levels, and stack testing requirements that need to be in place before PM_{2.5} can be adequately addressed in the PSD program. Utah is currently operating under the provisions of Appendix S for PM_{2.5} nonattainment areas.

b. **EPA Analysis:** As noted by Utah in their submission for the 2006 PM_{2.5} NAAQS, we previously approved Utah's submission for all four portions of CAA section 110(a)(2)(D)(i), including the PSD and visibility portions, for the 1997 PM_{2.5} NAAQS. (73 FR 16543). In this action, we are only assessing Utah's submission for the PSD portion of 110(a)(2)(D)(i) for the 2006 PM_{2.5} NAAQS.

With regard to the PSD portion of section 110(a)(2)(D)(i)(II), this requirement may be met by the state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA or (if the state contains a nonattainment area for the relevant pollutant) to a non-attainment NSR (NNSR) program that implements the 2006 PM_{2.5} NAAQS. As discussed in more detail in section 110(a)(2)(C), with our concurrent approval of certain revisions to Utah's PSD program, Utah's SIP will contain a PSD program that reflects all structural PSD requirements. Additionally, as stated in its submission, Utah is operating under the provisions of Appendix S in its 2006 PM_{2.5} nonattainment areas. The State therefore meets the structural NNSR requirements for this pollutant in the interim period between designation and final EPA approval of a nonattainment NSR program update. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the requirements of prong 3 of CAA section 110(a)(2)(D)(i) for the 2006 PM_{2.5} NAAQS.

5. **Adequate resources and authority:** Section 110(a)(2)(E) requires states to provide "(i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof)" and "(iii) necessary assurances that, where the state has

relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.”

a. **Utah’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite SIP Section V (Resources) which commits to implement program activities in relation to resources provided by the annual State/EPA Agreement and 105 grant applications. EPA approved this SIP originally in the early 1980’s and most recently on June 25, 2003 (68 FR 37744).

Section 41-6a-1642 provides counties the authority to run their own emissions inspection and maintenance program, and Subsection 41-6a-1642 (2) (b)(i) requires the counties emissions inspection and maintenance program to be made to attain or maintain ambient air quality standards in the county, consistent with the SIP and federal requirements. Section X of the SIP outlines the specific requirements of the automotive inspection and maintenance program.

b. **EPA Analysis:** Chapter 2 of Title 19 of the Utah Code gives the UDAQ and Air Quality Board (AQB) adequate authority to carry out the SIP. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required State matching funds to provide funding necessary to carry out Utah’s SIP requirements. Utah’s SIP meets the requirements of CAA section 110(a)(2)(E)(i) and (E)(iii) for the 1997 and 2006 PM_{2.5} NAAQS.

6. **State boards:** Section 110(a)(2)(E)(ii) requires that the state comply with the requirements respecting state boards under CAA section 128.

a. **Utah’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite UAC rules R307-110-2 (approved by EPA in the early

1980's and most recently on June 25, 2003 at 68 FR 37744), R307-110-31 (approved by EPA on November 2, 2005 at 70 FR 66264), R307-32 (approved by EPA on July 17, 1997 at 62 FR 38213), R307-33 (approved by EPA on August 1, 2005 at 70 FR 44055), R307-34 (approved by EPA on November 2, 2005 at 70 FR 66264), and R307-35 (approved by EPA on September 14, 2005 at 70 FR 54267).

SIP Section I (**Legal Authority**), A.1.g, recognizes the requirement that the State comply with provisions of the CAA (Section 128) respecting State Boards (Sections 19-2-104 UCA).

b. **EPA Analysis:** We propose to disapprove Utah's submissions for element 110(a)(2)(E)(ii) because the submissions do not adequately address the requirements of CAA section 128. To explain our proposed disapproval, we must discuss the state law governing the composition and authority of the Utah AQB. Under sections 19-1-301 and 19-2-104 of the Utah Code as they existed at the time of Utah's infrastructure submissions, the AQB had the authority to review decisions proposed by an administrative law judge (ALJ) on administrative appeals of permits and enforcement orders issued by the Utah DAQ. In other words, at that time the AQB was a "board or body which approves permits or enforcement orders" under the CAA and so fell within the scope of CAA section 128.³

Correspondingly, as described in Utah's infrastructure submissions, Utah SIP Section I referenced Utah Code section 19-2-104, which sets out the powers of the AQB, as addressing the requirements of CAA section 128. However, Utah Code section 19-2-103, which sets out the composition of the AQB, more directly addressed those requirements. In particular, section 19-2-103 required a majority of members to not derive a significant portion of their income from

³ See, for example, 78 FR 32613 (May 31, 2013), for a discussion of the phrase "board or body which approves permits or enforcement orders."

persons subject to permits or enforcement orders under the Act, and it specified a diverse range of interests that particular members must represent. In addition, section 19-2-103 required members of the AQB to adequately disclose potential conflicts of interest.

However, Utah's infrastructure submissions no longer reflect state law. In two bills enacted in 2012, the Utah Legislature amended Utah Code sections 19-1-301, 19-2-103, and 19-2-104 in several significant ways.⁴ First, the Legislature added section 19-1-301.5, which governs administrative appeals of permits issued by UDAQ. Section 19-1-301 continues to govern adjudicative proceedings regarding other UDAQ actions. Second, in both sections 19-1-301 and 19-1-301.5, the Legislature transferred the authority of the AQB over proposed ALJ decisions to the Executive Director of DEQ. Correspondingly, the Legislature amended section 19-2-104 to reflect that the AQB no longer retained that authority. However, the AQB appears to still retain some enforcement authorities under Utah Code sections 19-2-104(3)(a)(ii) and (b)(i). In addition, the Legislature modified the requirements for composition of the AQB and removed the provision requiring members of the AQB to disclose potential conflicts of interest.

With these changes in state law, Utah's infrastructure SIP submissions do not adequately address how or whether CAA sections 110(a)(2)(E)(ii) and 128 are satisfied by the State's SIP. First, to the extent that, after the changes in state law, the AQB remains a board that approves enforcement orders within the meaning of CAA section 128, the SIP should contain provisions addressing the requirements of section 128 as applied to the AQB, including the requirement of section 128(a)(2) that members of the AQB adequately disclose potential conflicts of interest. Even if the requirements of section 128 were previously addressed to some extent by Utah Code

⁴ Enrolled copies of Utah Senate Bills 11 and 21 from the 2012 General Session, which show the changes in state law in strikeout/underline format, are provided in the docket for this action.

section 19-2-103,⁵ the current version of section 19-2-103 at a minimum no longer addresses disclosure of potential conflicts of interest by the AQB. Second, to the extent that, after the changes in state law, the Executive Director of DEQ now approves permits within the meaning of CAA section 128, the Executive Director (and/or the Executive Director's delegate) is subject to the disclosure requirements of section 128(a)(2). See, for example, 78 FR 32613 (May 31, 2013). Neither the previous version nor the current version of Utah Code section 19-2-103 addresses disclosure of potential conflicts by the Executive Director.

As Utah's infrastructure submissions do not address the requirements of CAA sections 110(a)(2)(E)(ii) and 128 as they apply under current state law, we propose to disapprove Utah's submissions for the requirements of CAA section 110(a)(2)(E)(ii) for the 1997 and 2006 PM_{2.5} NAAQS.

7. **Stationary source monitoring system:** Section 110(a)(2)(F) requires "(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection."

⁵ EPA also notes that even if the previous version of Utah Code section 19-2-103 adequately addressed the requirements of section 128 as applied to the AQB, Utah SIP section I does not explicitly incorporate Utah Code section 19-2-103. Instead, it references Utah Code section 19-2-104, which does not address the requirements of CAA section 128. CAA Section 128 must be satisfied through federally enforceable provisions that are approved into the SIP. See, for example, 78 FR 32613 (May 31, 2013).

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite Section I (Legal Authority).A.1.f., codified at R307-110-2 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) requiring owners or operators of stationary sources to install, maintain, and use emission monitoring devices; and to make periodic reports to the State DEQ on the nature and amounts of emissions from such sources. The State DEQ will make such data available to the public as reported and as correlated with any applicable emission standards or limitations (Sections 19-2-104, UCA).

The State's submissions also cite UAC rule R307-110-4 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) SIP Section III (Source Surveillance) which includes inventory requirements, stack testing, and plant inspections (Sections 19-2-107 and 19-2-108, UCA, allow inspection of air pollution sources).

b. **EPA Analysis:** Utah's SIP meets the requirements of CAA section 110(a)(2)(F) for the 1997 and 2006 PM_{2.5} NAAQS.

8. **Emergency powers:** Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite UAC rules R307-110-2 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) SIP Section I (Legal Authority).A.1.c., that provides authority to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons (Section 19-2-112, UCA); and R307-

110-8 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) SIP Section VII (Prevention of Air Pollution Emergency Episodes) (Section 19-2-112, UCA). A February 12, 2007, OAQPS Issue Paper indicated EPA will be issuing a significant harm level rule for PM_{2.5}. Utah will address the requirements of 110(a)(2)(G) after EPA promulgates this rule.

b. **EPA analysis:** Section 19-2-112 of the UCA, cited by Utah SIP Section I, provides DEQ with general emergency authority comparable to that in section 303 of the Act. The SIP also requires DEQ to follow criteria in 40 CFR 51.151 in proclaiming an emergency episode and to develop a contingency plan.

EPA's September 25, 2009 guidance suggested that states with areas that have had a PM_{2.5} exceedance greater than 140.4 µg/m³ should develop and submit an emergency episode plan. If no such concentration was recorded in the last three years, the guidance suggested that the State can rely on its general emergency authorities. In this rulemaking, we view these suggestions as still appropriate in assessing Utah's SIP for this element. Utah has not had such a recorded PM_{2.5} level and thus an emergency episode plan for PM_{2.5} is not necessary. The SIP therefore meets the requirements of CAA section 110(a)(2)(G) for the 1997 and 2006 PM_{2.5} NAAQS.

9. **Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs provide for revision of such plan:

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite SIP Section I (Legal Authority).A.1.a, codified at R307-110-2, which identifies the statutory provisions that allow the UDAQ to revise its plans to take account of revisions of a NAAQS and to adopt expeditious methods of attaining and maintaining such standard. EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 at 68 FR 37744.

b. **EPA analysis:** Utah SIP Section I cites section 19-2-104 of the Utah Code. Section 19-2-104 gives the AQB sufficient authority to meet the requirements of CAA section 110(a)(2)(H).

10. **Consultation with government officials, public notification, PSD and visibility protection:** Section 110(a)(2)(J) requires that each SIP "meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection)."

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements of section 121 relating to consultation cite UAC rules R307-110-2 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) SIP Section I (Legal Authority).A.2, which adopts requirements for transportation consultation (Section 174, CAA); R307-110-7 (approved by EPA in the early 1980's and most recently on

June 25, 2003 at 68 FR 37744) SIP Section VI (Intergovernmental Cooperation) which provides a brief listing of federal, state, and local agencies involved in protecting air quality in Utah; and R307-110-20 SIP Section XII (Transportation Conformity Consultation) which establishes the consultation procedures on transportation conformity issues when preparing state plans. EPA approved SIP Section XII, Involvement, but it has been superseded by SIP Section XII Transportation Conformity Consultation, which was submitted to EPA on June 26, 2007 but EPA has not approved this SIP.

The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements of section 127 relating to public notification cite UAC rule R307-110-24 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) SIP Section XVI (Public Notification) which adopts the requirements to notify the public when the NAAQS have been exceeded as per section 127.

The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements of part C relating to the prevention of significant deterioration of air quality and visibility protection cite UAC rules R307-110-9 SIP Section VIII (PSD) which describes the program to prevent significant deterioration of areas of the state where the air is clean (EPA approved SIP Section VIII, PSD, but it has been updated and superseded by a new SIP Section VIII, PSD, which was submitted to EPA on September 15, 2006); and R307-110-25 (approved by EPA in April 1997 and most recently on June 25, 2003 at 68 FR 37744) SIP Section XVII (Visibility Protection) which describes the program to protect visibility, especially within the boundaries of the five national parks located in Utah (Sections 19-2-101 and 104, UCA).

b. **EPA Analysis:** The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, SIP section XVI, cited by Utah, satisfies the requirements of section 127 of the Act.

The State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21; these provisions are located in R307-405-2 of the UAC. EPA has further evaluated Utah's SIP-approved PSD program in this proposed action under IV.3 of CAA section 110(a)(2)(C). There, we propose approval with respect to the PSD requirements of element (C); we do likewise here with respect to the PSD requirements of element (J).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. The Utah SIP meets the requirements of CAA section 110(a)(2)(J) for the 1997 and 2006 PM_{2.5} NAAQS.

11. **Air quality and modeling/data:** Section 110(a)(2)(K) requires that each SIP provide for:

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS], and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite SIP Section II (Review of New and Modified Air Pollution Sources) codified at R307-110-3 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) which provides that new or modified sources of air pollution must submit plans to the UDAQ and receive an Approval Order before operating (Section 19-2-104, UCA).

b. **EPA Analysis:** Utah's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 and 2006 PM_{2.5} NAAQS. In particular, Utah's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at § 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at § 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

12. **Permitting fees:** Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover —

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite SIP Section I (Legal Authority).A.1.h., codified at R307-110-2 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744) which authorizes a fee to major sources to cover permit and enforcement expenses.

b. **EPA Analysis:** Utah's SIP meets the requirements of CAA section 110(a)(2)(L) for the 1997 and 2006 PM_{2.5} NAAQS. Final approval of Utah's title V operating permit program was given by EPA on June 8, 1995 (60 FR 30192). As discussed in the notice proposing approval of the title V program (60 FR 15105, Mar. 22, 1995), the State demonstrated that the fees collected were sufficient to administer the program. As mentioned by Utah in its submissions, the State is also authorized to collect fees from major stationary sources to cover permit and enforcement expenses.

13. **Consultation/participation by affected local entities:** Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. **Utah's response to this requirement:** The State's submissions for the 1997 and 2006 PM_{2.5} infrastructure requirements cite SIP Section VI (Intergovernmental Cooperation), codified at R307-110-7 (approved by EPA in the early 1980's and most recently on June 25, 2003 at 68 FR 37744), which lists federal, state, and local agencies involved in protecting air quality in Utah; and SIP Section XII (Transportation Conformity Consultation), codified at R307-110-20, which establishes the consultation procedures on transportation conformity issues when preparing state plans. EPA approved SIP Section XII, Involvement, but it has been superseded by SIP Section XII, Transportation Conformity Consultation, which was submitted to EPA on June 26, 2007, but has not been approved by EPA.

b. **EPA Analysis:** Utah's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 and 2006 PM_{2.5} NAAQS.

VI. What Action is EPA Taking?

In this action, EPA is proposing to approve the following CAA section 110(a)(2) infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) with respect to PSD requirements, (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA proposes to disapprove the section 110(a)(2)(E)(ii) infrastructure element for the 1997 and 2006 PM_{2.5} NAAQS. We propose to approve the following portions of the State's March 14, 2012 submission to address the 2008 PM_{2.5} NSR Implementation Rule and the 2010 PM_{2.5} Increment Rule; specifically we propose to approve the adoption of the text of 40 CFR 52.21, paragraphs (b)(14)(i),(ii),(iii); (b)(15)(i),(ii); (b)(23)(i); (b)(50) and paragraph (c) as they existed on July 1, 2011. Finally, EPA is taking no action on infrastructure elements (D)(i)(I), interstate transport of pollutants which contribute significantly

to nonattainment in, or interfere with maintenance by, any other state, and (D)(i)(II), with respect to visibility requirements for the 2006 PM_{2.5} NAAQS as EPA is acting separately on these elements.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Greenhouse gases, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

Dated: August 8, 2013

Shaun L. McGrath
Regional Administrator
Region 8

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